

Gov. Doc
Can
Com
H

Canada, Human Rights and
"Fundamental Freedoms, Special Joint
Committee on, 1947/48

SESSION 1947-48



CAIX 42
-47 H76

SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

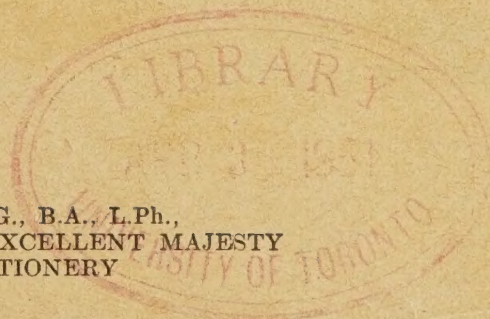
FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

FRIDAY, APRIL 23, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948



ORDERS OF REFERENCE

THE SENATE

TUESDAY, 20th April, 1948.

Resolved,—That the Senate do unite with the House of Commons in the appointment of a Joint Committee of both Houses of Parliament to consider the question of human rights and fundamental freedoms, and the manner in which those obligations, accepted by all members of the United Nations, may best be implemented;

And, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights, what is the legal and constitutional situation in Canada with respect to such rights, and what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms;

That the following Senators be appointed to act on behalf of the Senate on the said Joint Committee, namely, the Honourable Senators: Ballantyne, Bouffard, Crerar, Fallis, Gouin, Horner, Leger, McDonald (*Kings*), Roebuck, Turgeon and Wilson.

That the Committee shall have the power to recommend (a) that there be referred to the Supreme Court of Canada such questions as in the opinion of the Committee are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press and assembly, and the maintenance of the constitutional safeguards of the individual, are matters of federal jurisdiction; or (b) that there be referred to the Supreme Court of Canada a draft Bill of Rights, containing such provisions as in the opinion of the Committee should be included therein, to determine whether or not it is within the powers of the Federal Parliament to enact such a Bill of Rights for the Canadian people.

That the Committee shall have power to send for persons, papers and records, and to report to the Senate from time to time.

That a Message be sent to the House of Commons to inform that House accordingly.

FRIDAY, 23rd April, 1948.

Ordered,—That the said Committee be empowered to print, from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence, and that Rule 100 be suspended in relation thereto.

Ordered,—That it be empowered to sit during sittings and adjournments of the Senate.

Ordered,—That its quorum be ten.

ATTEST

L. C. MOYER,
Clerk of the Senate.

ORDERS OF REFERENCE

HOUSE OF COMMONS

FRIDAY, 16th April, 1948.

Resolved,—That it is expedient to appoint a Joint Committee of both Houses of Parliament to consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all members of the United Nations may best be implemented;

And, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights, what is the legal and constitutional situation in Canada with respect to such rights, and what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms.

And that Messrs. Beaudoin, Breithaupt, Cournoyer, Croll, Dechene, Diefenbaker, Fournier (*Maisonneuve-Rosemont*), Fulton, Hackett, Hansell, Harkness, Hazen, Herridge, Ilsley, LaCroix, Macdonnell (*Muskoka-Ontario*), Marier, Marquis, Michaud, Massey, Miller, Probe, Rinfret, Robinson (*Simcoe East*), Smith (*York North*), Stewart (*Winnipeg North*), Stuart (*Charlotte*), Whitman, Zaplitný be members of such Committee, as far as the interests of this House are concerned.

That the committee shall have power to recommend (a) that there be referred to the Supreme Court of Canada such questions as in the opinion of the committee are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press and assembly, and the maintenance of the constitutional safeguards of the individual, are matters of federal jurisdiction; or (b) that there be referred to the Supreme Court of Canada a draft Bill of Rights, containing such provisions as in the opinion of the committee should be included therein, to determine whether or not it is within the powers of the federal parliament to enact such a Bill of Rights for the Canadian people.

That the Committee shall have power to send for persons, papers, and records and to report to the House from time to time.

That a Message be sent to the Senate requesting that House to unite with this House for the above purpose, and select, if the Senate deems advisable, some of its Members to act on the said proposed Joint Committee.

FRIDAY, 23rd April, 1948.

Ordered,—That the said Committee be empowered to print, from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence, and that Standing Order 64 be suspended in relation thereto.

Ordered,—That the said Committee be empowered to sit during sittings of the House.

Ordered,—That the quorum of the said Committee be ten members.

ATTEST.

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORT TO THE SENATE

FRIDAY, April 23, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms beg leave to make their first report, as follows:—

Your Committee recommend:—

1. That it be empowered to print, from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence, and that Rule 100 be suspended in relation thereto.

2. That it be empowered to sit during sittings and adjournments of the Senate.

3. That its quorum be ten.

All of which is respectfully submitted.

L. M. GOUIN,
Chairman.

REPORT TO THE HOUSE OF COMMONS

FRIDAY, April 23, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print, from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence, and that Standing Order 64 be suspended in relation thereto.

2. That it be empowered to sit during sittings of the House.

3. That its quorum be ten.

All of which is respectfully submitted.

J. L. ILSLEY,
Chairman.

MINUTES OF PROCEEDINGS

FRIDAY, April 23, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 11.00 o'clock a.m.

Present:

The Senate: Honourable Senators Bouffard, Burchill, Crerar, Fallis, Leger, Roebuck, Turgeon.

The House of Commons: The Right Honourable J. L. Ilsley, and Messrs. Diefenbaker, Hackett, Hansell, Hazen, Lacroix, Macdonnell (*Muskoka-Ontario*), Marier, Marquis, Michaud, Miller, Probe, Rinfret, Stewart (*Winnipeg North*), Whitman, Zaplitny.

On motion of Mr. Whitman, seconded by Mr. Marquis, *Resolved*,—That Right Honourable J. L. Ilsley, M.P., be Joint Chairman.

On motion of Honourable Senator Turgeon, seconded by Honourable Senator Crerar, *Resolved*,—That Honourable Senator L. M. Gouin be Joint Chairman.

Mr. Ilsley took the Chair. He thanked the Committee for the honour of again serving as Joint Chairman and advised the Committee that Senator Gouin was unavoidably absent.

On motion of Mr. Hackett,—

Resolved,—That the Committee ask leave to sit while the Senate and the House are sitting and during adjournments of the Senate.

On motion of Mr. Marquis,—

Resolved,—That the Committee ask leave to print from day to day, 750 copies in English and 300 copies in French of its minutes of proceedings and evidence.

Senator Bouffard raised the question of the delay in receiving the French version of the Committee's evidence. The Chairman stated that a statement was read in this House at the last session of Parliament explaining that this delay was caused by the inability of the Translation Bureau to cope with the volume of work.

On the motion of Mr. Diefenbaker,—

Resolved,—That the Committee recommend that its quorum be reduced to ten.

On motion of Mr. Hackett, seconded by Senator Crerar,—

Resolved,—That the Steering Committee consist of seven members namely, Senator Turgeon, Messrs. Diefenbaker, Hansell, Stewart (*Winnipeg North*), the Joint Chairmen, and that the Chairman select one more member from representatives of the House of Commons.

The Committee considered procedure. A suggestion by the Chairman that procedure be reviewed by the Steering Committee was concurred in.

On motion of Mr. Diefenbaker,—

Resolved,—That Mr. J. P. Humphrey, Director of the Division of Human Rights, United Nations Organization, be invited to assist the committee during its consideration of the Draft International Declaration of Human Rights.

Senator Roebuck suggested that the Steering Committee take under consideration the question of inviting the provinces to co-operate with the Committee in the procedure by which a bill or declaration of rights might be attained.

At the request of Mr. Hackett, the Chairman directed that copies of "To Secure these Rights", a Report of the President's Committee on Civil Rights, 1947, be obtained and distributed to all members of the Committee.

At the request of Senator Bouffard, the Chairman directed that additional copies of the "Report of the Commission on Human Rights, 1948" be obtained.

The Committee adjourned at 11.40 o'clock a.m. to meet again at the call of the Chair.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

April 23, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 11 a.m. The Right Hon. Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: I thank you, gentlemen, for selecting me as one of your chairmen. Senator Gouin, the Joint Chairman, told me yesterday he could not be here today but that he would be here on Tuesday. I do not know when our next meeting will be, but he will be here on Tuesday.

Now, it is usual to read the order of reference. Shall we have it read or shall we have it taken as read? It has already received some discussion.

Now, we have to deal with some routine organization motions, one of which is to ask for permission to sit while the House is sitting or during adjournments of either House.

Mr. HACKETT: Mr. Chairman, that may become a rather serious matter when we have several committees sitting at the same time. At the moment there are several busy committees sitting, including the Prices Committee, the Veterans Affairs Committee and the Committee on Banking and Commerce. Probably we could go on the principle that the fewer people there are in the House the more progress they make.

The CHAIRMAN: Sometimes that may not be so.

Hon. Mr. ROEBUCK: The question is whether we can get power to do this.

Mr. HACKETT: That may be true; but I was saying that the demands upon the ordinary members' time are great.

Mr. MARQUIS: The motion can be passed, but we are not obliged to follow it.

The CHAIRMAN: I notice that the Committee on Banking and Commerce is sitting in the evening.

Mr. HACKETT: Yes, that committee is sitting from 8.30 to 10.30 on two or three nights a week.

The CHAIRMAN: It is quite a problem to know how to keep so many committees functioning, and we may have to recommend that this committee sit at peculiar hours, as the Banking and Commerce Committee is doing. However, the motion is that the committee ask leave to sit while the House is sitting and during adjournments of the Senate.

Mr. HACKETT: I so move.

Hon. Mr. ROEBUCK: I do not like that part which contains the words "during adjournments of the Senate"; I do not know that we are going to adjourn, but if we happen to be away it would not be a good thing for the committee to sit.

The CHAIRMAN: Very often a number of the senators are here even while the Senate is adjourned.

Hon. Mr. ROEBUCK: Only those who live in Ottawa; the rest go home. Of course, those who live in the far east or the far west are probably here. However, go ahead; but I hope you do not have to sit on those occasions.

Mr. HACKETT: I hope we do not have to sit in the evening.

The CHAIRMAN: I suggest that we set up a steering committee on which the Senate will be represented and that the whole matter of sittings can be left to the steering committee. The clerk tells me that sometimes the Senate is technically adjourned, but that on the date we might meet the Senate might not convene until at night. That is, the Senate is adjourned but nevertheless the senators are here. If there is no objection I will declare the motion carried.

There should be a motion asking for authority to print the day-to-day proceedings. Last year there was authority to print 750 copies in English and 200 copies in French, and I understand that that number proved sufficient. The clerk reminds me that sometimes the French copies are rather late in coming out.

Hon. Mr. ROEBUCK: Our Committee on Immigration printed 1,000 copies and that number does not seem to be excessive.

Mr. STEWART: If 750 copies in English proved a reasonable number from our experience I move we print that number.

The CHAIRMAN: There is the point about the French printing; whether the number printed in French should be larger, provided they are printed in time.

Mr. STEWART: If they are not printed in time I cannot see how they can be made immediate use of.

The CHAIRMAN: The clerk tells me that the translation bureau is not equal to the task. There was a statement made in the House last year about it.

Mr. MARQUIS: I move that 300 copies be printed in French.
Carried.

The CHAIRMAN: We have now to deal with our quorum. The rule is that the quorum must consist of a majority of the members. Last year our quorum was fixed at ten, and it is suggested that that be the quorum fixed for this year.

Mr. HACKETT: I think that is very wise in view of the number of committees sitting and the difficulty of getting a quorum.

Mr. DIEFENBAKER: I so move.

The CHAIRMAN: That motion is seconded by Mr. Marquis.
Carried.

Then there is the matter of the appointment of a steering committee.

Mr. DIEFENBAKER: What was the position last year as regards a steering committee?

The CHAIRMAN: Last year's steering committee was composed of seven members of the committee, and I should think we could take the same committee, if that is satisfactory to the committee; that is, with the exception of Mr. Belzile, who was on the committee last year but who is not on it this year. Would the committee leave to me the selection of that one member who would be a government supporter and who would replace Mr. Belzile? We could agree on the rest of the members of the steering committee now.

Mr. DIEFENBAKER: Who were they last year?

The CHAIRMAN: Senator Turgeon, Mr. Diefenbaker, Mr. Hansell, Mr. Stewart, the two joint chairmen and Mr. Belzile. Seven in all. The motion would be that the steering committee consist of seven members and that one be selected from the House of Commons by the chairman to replace Mr. Belzile.

Mr. HACKETT: That is all right. I so move.

Hon. Mr. CRERAR: I second that motion.
Carried.

The CHAIRMAN: Now, is there any discussion with regard to the work of the steering committee? I think that committee had better meet and discuss what our work will be this year, and anything that I could say would be premature. My own idea is that the first thing we should do is to circulate this material that we have from the United Nations and we should consider that declaration upon which the comments of Canada have been invited; comments, observations and suggestions. I am suggesting that to the steering committee, but I am not asking anybody to take any action. Mr. Diefenbaker may have different views and so may others.

Mr. DIEFENBAKER: Mr. Chairman, I agree with that, but I was wondering if it would be possible to get Dr. Humphrey to come before this committee; he is the secretary of the international committee. He knows the subject and all its ramifications, and in a couple of meetings he could place before us the situation exactly as it occurred in the United Nations, and what has taken place, better than any other man.

The CHAIRMAN: Would you like to move that? I agree with you. I think we should have him here.

Mr. DIEFENBAKER: I believe he is the one man who can give us more information than anybody else.

Mr. STEWART: I second that motion.

Mr. HACKETT: I am going to ask, Mr. Chairman, if it would be possible for the members to have a copy of the report of the president's Committee on Human Liberties.

Mr. DIEFENBAKER: Was it not distributed?

Mr. HACKETT: I do not think it was distributed to everybody.

Mr. DIEFENBAKER: It was sent to me in the regular course of mail and I thought everybody had it.

Mr. HACKETT: I should like a copy. It could easily be got from Washington.

The CHAIRMAN: The clerk of the committee will take note of your request and try to get an adequate number of copies to circulate to the members of the committee. It is a very interesting statement.

Hon. Mr. ROEBUCK: I have a suggestion I should like to offer to the steering committee for its consideration. This subject is full of difficulties. It is much easier to observe human freedoms than it is to compile way to carry them out or to draw up a document covering them. That is the first trouble we are up against; and the second trouble is that our jurisdiction is so very greatly divided. It is only that portion of human freedoms which is affected—that subject-matter which comes within dominion jurisdiction—that at the moment we can deal with effectively, unless we simply wrote an essay on it: so it struck me that it might be of some value if we could bring about co-operation between the dominion jurisdiction and the provincial jurisdictions as regards this matter. At the present moment a great many people are looking to the dominion jurisdiction for legislative action on matters within provincial jurisdictions and they are going to be disappointed if we do what is within our power and do not do what is not within our power. So it seems to me that if we are going to have a bill of rights or a declaration of rights that is sufficiently comprehensive to satisfy ourselves and others we must have the co-operation of the provinces. Therefore, I should like the steering committee to consider that matter and see if it is possible for us at least to invite them to co-operate as to the procedure by which it could be accomplished.

The CHAIRMAN: The steering committee will consider that matter. My recollection is that the matter was given some consideration in the Ontario House, and the consideration was not favourable. However, that is a matter for the steering committee.

Hon. Mr. ROEBUCK: The views on it do not matter; whether they are in favour or opposed does not matter.

The CHAIRMAN: If we are asking for co-operation it does matter.

Mr. HACKETT: I think that is fundamental, because co-operation means, if I understand the significance of the word, that they would work with us in the preparation of a statement or a statute.

Now, there are headings: freedom of assembly, for instance. That cuts right across municipal regulations. Freedom of speech has to do with the law of libel, and one can go on and imagine a curtailment in provincial jurisdiction, and I think it will take some ingenuity and a great deal of luck to avoid a clash on those points. I believe everybody should be heard.

Hon. Mr. ROEBUCK: That is what I meant when I said it did not matter.

Mr. HACKETT: But when we attempt to get the provinces to co-operate in the sense in which I understand the word to mean, it would mean a cession or surrender of some rights which they may be very reluctant, and possibly rightfully reluctant, to yield.

The CHAIRMAN: The point is that it may not be a surrender at all; but the provinces traditionally are very jealous of their rights; and in all sorts of lines they take a position—it is not always the correct position—but they take the position which will give them the maximum rights and powers under the constitution. It is very difficult on any doubtful matter to get the provinces to agree that that is within the dominion jurisdiction. In cases of doubt the provinces naturally favour the maximum jurisdiction for themselves.

Mr. STEWART: Would it not clarify the situation if this committee adopted the term constitutional right and not civil rights: civil rights, as opposed to criminal rights, has caused some distraction before. Constitutional rights apply to every Canadian from coast to coast.

Mr. DIEFENBAKER: As a matter of fact, the difficulty comes up immediately in connection with an international bill of rights or a declaration, as to what degree may Canada, as a signatory of the United Nations charter, discharge her responsibilities under the charter if in so doing the declaration of rights or the international bill of rights comprises certain matters of provincial jurisdiction, and we could continue to discuss this matter continually; and it is for that reason I made the suggestion, which I am going to make when we get into the steering committee, that the only way in which the matter can be determined is by a submission to the Supreme Court with a view to ascertaining the degree to which Canada may discharge her responsibilities federally under the United Nations charter.

In your speech in the House you pointed out the difficulties of so drafting a submission to the Supreme Court as would permit a decision in that regard. Well, the United Nations committee on the subject of human rights and fundamental freedoms has drafted what is the consensus of opinion of the eighteen nations whose representatives were on that committee; and when we come to deal with that question the suggestion I make is this, that the recommended international declaration on human rights be the one to be submitted to the Supreme Court. It is already drafted; it represents what Canada is going to be asked to accept or to consider: and when I listened to you last Friday in dealing with this question I had in mind bringing that fact to your attention, the fact that an international bill of rights has been drafted, and we in Canada

have to decide once and for all the question as to whether or not Canada as a nation, assuming international responsibilities, can discharge them by federal legislation to that end.

Now, we have gone far afield from what we set out to do today. You mentioned that we are going to have a steering committee, and I pointed out the circumstances. We have before us the recommendations. We are going to be in a strange position as a nation if we find ourselves in the position where the representatives of Canada at an international organization such as the United Nations are hamstrung in carrying out the responsibilities provided for under the charter. That is a matter to be dealt with later on.

Mr. HACKETT: I would like to suggest a word. My recollection is that much of the legislation introduced by the government led by Mr. Bennett as they came to the end of an eventful career was based upon an article in the British North America Act which gave the federal government some powers to carry out the treaty obligations, and my recollection is that much of that legislation was held to be ultra vires. I do not want my friend, Mr. Diefenbaker, to think that I am hostile to any project at this stage, but I would be very loath to see a question of this importance presented to any court in other form than a statute passed either by a provincial legislature or by the federal government. I think that the question is of too great importance to be passed upon in the rather thin ether of conjecture. We have got a document which sets forth in language which lacks the precision of a statute a declaration of rights, and I doubt if a court could pass upon it without exceeding its jurisdiction.

The CHAIRMAN: The only thought that occurs to me is that perhaps the covenant is a better document to submit to the court than the declaration, if we do not go as far as Mr. Hackett says and wait for a statute.

Mr. DIEFENBAKER: In answer to Mr. Hackett I point out this, that they did not require a statute to be passed by parliament in order to determine whether or not the parliament of Canada could abolish appeals to the Privy Council, and they did not require a statute either when it came to determining questions regarding one other matter.

Mr. HACKETT: That is why some of the provinces contend that when they want to go to the Privy Council they will go, and if the dominion does not like it, well—

Mr. DIEFENBAKER: I was answering Mr. Hackett when he said he doubted whether the court would consider a matter without a statute.

Mr. HACKETT: I did.

Mr. DIEFENBAKER: I said that they have.

The CHAIRMAN: I think since the labour decisions of the 30's, when we enter into international conventions on labour matters, we always do it with a rider that it is not within our jurisdiction to carry them out wholly and all we can do is bring them to the attention of the provinces; so that our signature is merely an indication that that is what our federal government is in favour of.

Mr. HACKETT: They would do it if they had the power.

The CHAIRMAN: Yes.

Mr. DIEFENBAKER: There is a provision in the declaration that was passed by the Commission on Human Rights that where the federal system exists the declaration shall operate in accordance with the views expressed by ourselves.

The CHAIRMAN: That is in the covenant.

Mr. HACKETT: Yes, that is in the covenant and not in the declaration.

Mr. DIEFENBAKER: Yes.

The CHAIRMAN: I think that we had better fix a date and time for our next meeting if we possibly can.

Mr. MILLER: Will the reference to this committee appear in the printed report?

The CHAIRMAN: It will be in the first report.

Mr. MILLER: What about the work that was done by this committee last year; has it gone by the boards, or do we build on it?

The CHAIRMAN: I think we should build on it, yes. It is all printed. I do not think we should start over again and cover the same ground. It is suggested that perhaps the final report should be put into the minutes.

Hon. Mr. BOUFFARD: Do you think it would be possible to have a few additional copies of this booklet regarding the United Nations?

The CHAIRMAN: Oh, yes. Could we not have it understood now that they will be circulated?

The CLERK: They have been circulated.

The CHAIRMAN: Is there something else that should be circulated?

Hon. Mr. BOUFFARD: I wonder if this committee could secure a few more copies for themselves of this booklet?

The CHAIRMAN: The clerk tells me that he will attempt to get some more copies.

Hon. Mr. BOUFFARD: I would like five or six copies.

The CHAIRMAN: Now, has the committee any views as to the date and time of our next meeting?

Mr. HACKETT: That is a matter for the steering committee, which will have before it the agenda for next week. I would not like a meeting of this committee to clash with that of another.

The CHAIRMAN: I agree with you. Now, does anyone else wish to bring anything before the meeting?

Mr. HANSELL: Mr. Chairman, we have had delivered this morning a few documents and they are all clear, I think, except one—this one I am holding up—and it is signed by Mr. W. J. Waines, president, and David Owens, secretary; but there is nothing to indicate what Mr. Waines is president of.

Mr. STEWART: The Winnipeg Civil Rights Association.

Mr. HANSELL: That does not appear on the document, and there is no date.

Mr. STEWART: It is the Winnipeg Civil Rights Association.

The CHAIRMAN: That is the information you want. Does anyone else wish to bring anything before the meeting, or can we adjourn? It is moved that we adjourn. If there is no objection the meeting is adjourned.

The meeting adjourned.

